

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MARK A. SPRUANCE,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 06-337-JJF
	:	
THOMAS L. CARROLL,	:	
Warden, and CARL C. DANBERG,	:	
Attorney General for the State of Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Mark A. Spruance, has applied for federal habeas relief, challenging his December 1992 conviction by a Delaware Superior Court jury for attempted robbery in the first degree and unlawful sexual intercourse in the first degree. D.I. 2. By the terms of the Court's order, the answer is due to be filed on August 21, 2006.

2. Counsel has been, and continues to be, diligently working on numerous cases before this Court and the state courts, having filed seven answers in federal habeas actions and two answering briefs in cases before the Delaware Supreme Court during the last seven weeks. Because there are currently two deputy vacancies in the Appeals Division, and the workload has greatly increased for the division attorneys. Consequently, reassignment to another attorney is not feasible or practical at this point in time. Further, the Chief of Appeals Division recently has been out of the office for more than a week for a work-related conference. And the undersigned will be out of town

on a prepaid vacation next week. Counsel is doing her best to prioritize cases by the date received. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including September 22, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: August 11, 2006

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: August 11, 2006

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2006, I electronically filed a motion for extension of time with attachment with the Clerk of Court using CM/ECF. I also hereby certify that on August 11, 2006, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Mark A. Spruance
SBI No. 00170011
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759
elizabeth.mcfarlan@state.de.us

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THOMAS L. CARROLL,

Warden, and **CARL C. DANBERG,**
Attorney General for the State of Delaware,

Respondents.

ORDER

This ____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before September 22, 2006.

United States District Judge